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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-105

13 ROBERT LYNN SWINDELL
3220 May School Road
14 Livermore, CA 94551

A C C U S A T I O N

15 Registered Nurse No. 539117

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about December 8, 1997, the Board of Registered Nursing issued
24 Registered Nurse Number 539117 to Robert Lynn Swindell (Respondent). The Registered Nurse
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 October 31, 2007, unless renewed.

27 JURISDICTION

28 3. This Accusation is brought before the Board of Registered Nursing

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 STATUTORY PROVISIONS

4 4. Section 2750 of the Business and Professions Code (Code) provides, in
5 pertinent part, that the Board may discipline any licensee, including a licensee holding a
6 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
7 2750) of the Nursing Practice Act.

8 5. Section 2761 of the Code states:

9 "The board may take disciplinary action against a certified or licensed nurse or
10 deny an application for a certificate or license for any of the following:

11 "(a) Unprofessional conduct, which includes, but is not limited to [certain
12 enumerated categories]...."

13 6. Section 125.3 of the Code provides, in pertinent part, that the Board may
14 request the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 CAUSE FOR DISCIPLINE
18 (General Unprofessional Conduct)
(Bus. & Prof. Code §§2761(a))

19 7. Respondent is subject to disciplinary action under section 2761(a) in that
20 he engaged in general unprofessional conduct as a registered nurse. The circumstances are as
21 follows:

22 8. Respondent was employed by Mount Diablo Medical Pavillion as an
23 RN/Charge Nurse, assigned to the mental health section. At around 5:30 a.m., on July 16, 2004,
24 respondent slapped a patient, a developmentally delayed schizophrenic male in his early 30's who
25 was admitted to the facility on a 72-hour hold pursuant to Welfare and Institutions Code section
26 5150. Although respondent stated that he slapped the patient in self-defense, other information
27 provided by a fellow employee indicated otherwise, and respondent was suspended from his
28 employment position.

9. Respondent's conduct in slapping a mental health patient at Mount Diablo Medical Pavillion, as alleged in paragraph 8 above, constitutes unprofessional conduct within the meaning of Code section 2761(a) and provides grounds for disciplinary action.

PRA YER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse Number 539117, issued to Robert Lynn Swindell;

2. Ordering Robert Lynn Swindell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/25/07

Col. A. Hochberg for
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant